IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12563 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH Sd/-
and
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SWETA EXPORTS

Versus

UNION OF INDIA THRO' JOINT SECRETARY

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Appearance:

1. Special Civil Application No. 12563 of 2002

MS SONA SAGAR for Petitioner No. 1-3

MR JITENDRA MALKAN, for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 01/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

What is challenged in this petition under Article 226 of the Constitution is the order dated 6/8/2002 passed by the Joint Secretary of Government of India,

Ministry of Finance, Department of Revenue (Annexure-D to the petition), in so far as the petitioner is required to make predeposit of 50% of the amount of Rs.4,28,293/= for the purpose of entertaining the appeals by the Commissioner of Central Excise (Appeals), Mumbai and for interim stay against recovery pursuant to the order-in-original dated 15.2.2001 passed by the Additional Commissioner of Central Excise (Appeals), Mumbai, the appeal against which was dismissed by the Additional Commissioner (Appeals) for non-compliance with the condition in the stay order.

2 Ms.Sona Sagar, learned Counsel for the petitioner has submitted that when the petitioners' revision application against dismissal of appeal for compliance with the stay order under Section 35F was being decided by the Central Government, economic hardship of the petitioner was required to be considered by the revisional authority. The petitioners are not in a position to deposit the duty amount as required by the order dated 25/09/2001 on stay application under section 35F of the Act, and therefore, the appeal came to be dismissed, the revisional authority ought to have allowed the revision application and directed the Commissioner (Appeal) to decide the petitioners' appeals on merits without any predeposit.

3. On the other hand, Mr.Malkan, learned Senior Counsel for the respondents has supported the order of the revisional authority and submitted that the order of predeposit of 50% of the amount involved is just and proper.

4. Having heard the learned Counsel for the parties we are of the view that when the revisional authority found substance in the petitioners' revision application that the order of the appellate authority requiring predeposit of the entire amount of Rs.4,28,293/- was too harsh and called for modification, the revisional authority ought to have also considered that the amount to be predeposited by the appellants should be such that the financial condition would permit them to deposit.

5. In the facts and circumstances of the case, we are of the view that the interests of justice would be served if the revisional order dated 6/8/2002 passed by the Joint Secretary, Government of India (Annexure-D to the petition) is modified to the effect that upon the petitioners making predeposit of 25% of the amount of duty involved in Appeal Nos. 276 to 279/M-I/01 by

31/10/2004, the Commissioner (Appeals), Central Excise, Mumbai shall hear and decide the petitioners' appeals on merits.

6. Accordingly this petition is partly allowed. The impugned order dated 6/8/2002 (Annexure-D to the petition) passed by the Joint Secretary of Government of India, Ministry of Finance, Department of Revenue shall be substituted by the following order :-

> Upon the petitioners making predeposit of 25% of the amount of duty involved in Appeal Nos. 276 to 279 of 2001 (rebate on exports) by 30/11/2004, the Commissioner of Central Excise (Appeal), Mumbai shall hear and decide the said appeals on merits and recovery of the balance amount shall remain stayed during pendency of the appeals.

7. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S.Shah, J)

(D.A.Mehta, J)

m.m.bhatt